

Barbering and Cosmetology Industry

The purpose of this information sheet is to provide the barbering and cosmetology industry with standards to be used when applying the common law rules of employment specifically to a Professional licensed by the Barbering and Cosmetology Program. This information is intended to make clearer those circumstances under which this individual is an employee or independent contractor.

What is a Licensed Professional?

A "licensed professional" is an individual licensed by the Department of Consumer Affairs and includes, but is not limited to, barbers, cosmetologists, manicurists, electrologists and estheticians.

What is a Principal?

A "principal" is defined as a cosmetology business operator or salon owner, or his or her agent or manager.

The types of businesses in which the licensed professionals provide services include but are not limited to:

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| - Barber Colleges | - Facial Salons |
| - Barber Shops | - Hairdressers |
| - Beauty and Barber Shops combined | - Hair Stylists, Men |
| - Beauty Culture Schools | - Hair Stylists, Women |
| - Beauty Shops or Salons | - Manicure/Pedicure shops |
| - Clinics for Skin Care | - Spas |
| - Cosmetology Schools | - Unisex |
| - Cosmetology Shops or Salons | - Hairdressers |

Is a Licensed Professional an employee or independent contractor?

Generally, under the common law rules an employment relationship exists when the principal has the right to control the manner and means of accomplishing a desired result. Section 4304-12 of Title 22, California Code of Regulations (CCR), provides standards to be used when applying the common law rules specifically to

a Professional licensed by the Barbering and Cosmetology Program. The following table in Section 4304-12 of Title 22, CCR, provides Determination Elements which shall be considered to determine whether a licensed professional is an employee or independent contractor.

Each element provides evidence indicating whether the licensed professional is an employee or independent contractor with an explanation of the weight given to the element. Not all of the elements listed in the table need to be present to make a determination that a particular employee or independent contractor relationship exists. A determination of whether the services are being performed as an employee or independent contractor will depend upon a grouping of the elements present that are significant in relationship to the services being performed.

Additional Information

Specific questions or assistance regarding the employment status of licensed professionals in the Barbering and Cosmetology Industry may be directed to the nearest Employment Tax Customer Service Office listed in the white pages of the telephone book or visit us at our Web site at www.edd.ca.gov under "Department Directory-Employment Tax".

You may also call our Employment Tax Call Center toll-free at 1-(888)-745-3886 for assistance. For TTY (nonverbal) access, you can reach the Department by calling 1-(800)-547-9565.

A formal ruling may also be requested by submitting a DE 1870, Determination of Work Status, to:

State of California
Employment Development Department
FACD Central Operations, MIC 94
10969 Trade Center Drive, Ste. 203
Rancho Cordova, CA 95670-6140

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities.

Table of Determination Elements – Barbering and Cosmetology

ELEMENTS	EMPLOYEE	EVIDENCE OF INDEPENDENT CONTRACTOR	WEIGHT
(1) Policies, Rules or Procedures of Conduct	The principal establishes the policies, rules or procedures of conduct that are followed by the licensed professional such as, prices, business hours, refunds, operating the cash register, work schedules, lunch breaks, attendance, dress code, customer complaint resolution, customer relations, and maintaining a concession of beauty products to the general public.	The licensed professional performs his or her services independent of the principal's policies, rules, or procedures of conduct. The licensed professional establishes his or her own hours of work, sets his or her own prices, directly collects payments from his or her customers, directly schedules his or her clients' appointments, personally resolves any customer complaints related to his or her services, makes refunds to customers from his or her own funds, and determines his or her own manner of dress. The licensed professional is not required to sell the principal's retail items.	This element carries great weight. When the principal sets policies, rules, or procedures of conduct relating to the manner and means by which the licensed professional performs his or her services, it strongly indicates a right of direction and control. The right of the principal to direct and control the manner and means by which the services are performed is the primary test used to make an employment relationship determination. If that right exists, whether or not exercised, an employment relationship exists. Evidence that the principal does not have the ability to control the manner and means by which the licensed professional provides services is equally indicative of an independent contractor relationship.
(2) Supervision on the Job	The principal supervises the licensed professional. The principal gives instructions that are followed by the licensed professional. The principal or its representative is on the premises to observe the licensed professional's services. The principal gives instructions to the licensed professional regarding general clean-up activities at the business facility. The principal assigns customers to the licensed professional. The principal reviews or evaluates the performance of the licensed professional by soliciting comments from customers. If the licensed professional is not performing satisfactorily, the principal can train, reassign, or terminate the licensed professional.	The licensed professional receives no instructions or supervision from the principal. The licensed professional determines whether or not a walk-in customer will be served and can refuse to serve any customer. The licensed professional is fully responsible for his or her own work, and personally resolves any customer complaints related to his or her services. The principal does not evaluate the licensed professional in any way.	This element carries great weight. The principal's supervision of the licensed professional is evidence that the principal has the right to control the services, and that this right of control is complete and authoritative. The right of control, whether or not exercised, carries the greatest weight in making an employment relationship determination. Evidence that the principal does not have the ability to control the manner and means by which the licensed professional provides services is equally indicative of an independent contractor relationship.
(3) Training	The principal provides training. The principal requires the licensed professional to attend classes, seminars or conferences. The principal pays for the training.	The principal does not provide training to the licensed professional. If training classes, seminars, or conferences are made available, attendance is voluntary. Failure to attend carries no negative consequence. The licensed professional pays for any training made available.	This element carries medium weight. Training received from the principal covering policies, rules, and procedures, or instructions on how to perform the services, would indicate the principal has the right to direct and control the services of the licensed professional.
(4) Meetings	The principal arranges meetings. The licensed professional is expected to attend. The licensed professional is paid for time spent in meetings.	The licensed professional is not expected or required to attend staff meetings. Failure to attend carries no negative consequence. The principal does not pay the licensed professional for any time spent attending meetings.	This element carries medium to high weight. Like training, if the purpose of a meeting is to convey policies, rules, procedures, or instructions on performing services, it indicates that the licensed professional is not in control of his or her services and is an indication of employment.

Table of Determination Elements – Barbering and Cosmetology

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(5) Work Schedules	The principal determines the hours and days of the week the licensed professional will work. The principal requires the licensed professional to devote full-time effort to production of the principal's income. The principal maintains a common appointment book. The principal sets the hours of the business, including opening and closing times. The licensed professional has to perform his or her services within the principal's fixed business hours. The licensed professional must adhere to the work schedule set by the principal. The principal requires the licensed professional to be on the premises during certain hours for a minimum number of days per week.	The licensed professional sets his or own hours of work. The licensed professional sets his or her own appointments. The licensed professional has the right to refuse any appointment or refer a client to another professional licensed by the Bureau of Barbering and Cosmetology. The licensed professional sets his or her own prices, directly collects payments from his or her customers, personally resolves any customer complaints related to his or her services, makes refunds to customers from his or her own funds, and determines his or her own manner of dress. The licensed professional is not required to sell the principal's retail items.	This element carries medium to high weight. When the principal determines the hours and dates the licensed professional will work, it is strong evidence of the right to control the services of the licensed professional, and carries great weight in indicating an employment relationship. When the licensed professional has freedom to determine when and how services are performed, and controls his or her schedule, medium to high weight is given toward independence.
(6) Location of Work (work station)	The licensed professional cannot render services for himself or herself or other business establishments without restriction. The principal is in control of the premises where the services are provided since the principal holds the lease, owns the equipment, and holds the establishment license. The licensed professional can not sublet or relinquish his or her chair (workspace). The licensed professional does not rent or lease a specific booth (workspace).	The licensed professional leases his or her work space from the principal and pays a flat fee for rent, rather than a percentage of income. The licensed professional has keys to the premises and is free to work any hours. The licensed professional is free to provide services at other locations, without informing the principal.	This element carries medium to high weight. When the principal controls the location where services are performed, it is strong evidence of the right to control the services of the licensed professional and would be an indication of employment. This element would carry less weight if the licensed professional is not allowed to possess a key to the premises because the property owner (third party) prohibits the distribution of keys to other workers or if the property owner dictates the hours of operation (shopping mall).
(7) Written Contract or Agreement	The written agreement between the principal and the licensed professional gives the principal control over the manner and means by which the licensed professional performs services. The written agreement provides that the licensed professional has to sell the principal's retail beauty products to the general public. The principal receives a percentage of fees collected and not a contracted flat rate for booth (workspace) rental. Although the written agreement states that the licensed professional rents a particular chair, the principal assigns the licensed professional to work at various chairs and controls his or her working hours.	The written agreement clearly explains the day-to-day working relationship between and by each party to the contract. The contract provides that the licensed professional establishes his or her own hours of work, sets his or her own prices, directly collects payments from his or her customers, directly schedules his or her clients' appointments, personally resolves any customer complaints related to his or her services, determines his or her own manner of dress. The contract states that the licensed professional is not required to sell the principal's retail products. This agreement sets a flat rate of rent for the use of the principal's facilities by the licensed professional.	This element carries medium weight. Written agreements do not necessarily depict the actual relationship. The actual practices of the parties in a relationship are more important than the wording of an agreement in making a determination. A contract carries little weight if the contract leans toward independence, but the actions of the parties point toward employment.

Table of Determination Elements – Barbering and Cosmetology

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(8) Termination	Both the principal and the licensed professional have the right to terminate the relationship at will, without prior notice, and without any further contractual liability (except for services already performed). The principal may terminate the contract on one day's notice if there is a violation of the written agreement, but there is no such corresponding provision for the licensed professional. The principal could immediately terminate the relationship for noncompliance of the principal's policies. The licensed professional could be terminated for refusing to accept an assignment. The principal can reprimand and terminate a licensed professional for misconduct or because of a customer complaint.	The rental agreement may be terminated by mutual agreement, or by either party's violation of the agreement's terms (e.g., failure to pay rent). The licensed professional would be liable to principal for unpaid rent, and principal would owe the licensed professional for any prepaid rents.	<p>The question of the right to terminate the relationship carries great weight.</p> <p>The right to terminate the licensed professional at will, without cause, is strong evidence of employment. The right to terminate conveys an inherent power of the principal over the licensed professional and shows the licensed professional's likely submission to control by the principal.</p>
(9) Engagement in a Distinct Business	The licensed professional does not operate his or her own business separate from that of the principal. The services performed are an integral part of the principal's business. The licensed professional performs all of his or her services at the principal's place of business and under the principal's name. The licensed professional does not advertise his or her services. The principal's name is on the business license. The business cards of the licensed professional have the principal's business identified on them. The principal sets the fees for services, products, and merchandise purchased by clients. The principal absorbs the loss when the customer does not pay or issues a non-negotiable check. The principal in effect guarantees payment for services rendered by the licensed professional and the licensed professional does not incur the entrepreneurial risk of loss. The principal's name is on the credit card machine. The principal provides liability insurance and worker's compensation coverage. The principal assigns customers to the licensed professional. The principal maintains an appointment book. If the licensed professional cannot perform or complete a job for a customer, he or she is required to notify the principal who arranges for a substitute. The licensed professional cannot work at another location and take his or her own clients. The licensed professional does not have clientele independent of the principal's walk-in customers. The licensed professional is not engaged in an entrepreneurial venture or put at a financial risk. The professional licensed by the Bureau of Barbering and Cosmetology collects the payments from customers and places all funds in a communal cash register.	The licensed professional operates an independent business separate from that of the principal. The relationship between the principal and the licensed professional is that of a landlord and tenant. The licensed professional has a business license where required, is properly licensed by the Department of Consumer Affairs (he or she is not required to have a separate establishment license) for the type of services provided, and advertises at his or her own expense, including the purchase of his or her own business cards. The licensed professional has his or her separate clientele and the client lists are the property of the licensed professional and not the principal. The licensed professional is not required to participate in the principal's advertised specials. The licensed professional pays for his or her own products and merchandise, and absorbs losses from a client's failure to pay for services, or non-negotiable checks. The licensed professional is personally responsible for his or her own performance and makes refunds to customers from his or her own funds. The licensed professional carries the necessary liability insurance for the services performed. Through this the licensed professional bears the entrepreneurial risk of loss. The licensed professional sets his or her own appointments. The licensed professional sets his or her own hours of work. The licensed professional determines whether or not a walk-in customer will be served and can refuse to serve any customer, or refer a client to another licensed professional. The licensed professional sets his or her own prices and directly collects payments from his or her customers. The licensed professional is free to provide services at other locations, without informing the principal.	This element carries great weight. If the licensed professional does not have an established separate business, distinct from that of the principal, and the services are performed in the furtherance of the principal's business, great weight would be given towards employment. If the licensed professional has a separate business, distinct from that of the principal, where he or she can make business decisions, which would enable him or her to earn a profit or incur a financial loss, great weight would be given towards independence.

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(10) Level of Skill	In this particular industry, both employees and independent contractors are required to have a license from the Department of Consumer Affairs to perform cosmetology services.		This element is neutral. The level of skill, by itself, is not controlling. However, a high level of technical skill will weigh towards independence when combined with other elements such as engagement in a distinct business, and lack of supervision. A low level of technical skill weighs in favor of employment, since, as skill level declines, the licensed professional has less capability to exercise the discretion necessary for independence. In these occupations an individual can work either as an independent contractor or as an employee with the same level of skill.
(11) Duration of Services	The licensed professional performs services that are on a regular, continuous, or full-time basis.	The licensed professional performs services that are short in duration, intermittent and are not performed on a continuous or full-time basis. The licensed professional can perform services for one principal for an extended period of time, however, the relationship cannot be indefinite.	This element carries low to medium weight. If the time in which the service is performed is short, the worker is less likely to subject him or herself to control regarding how the services should be performed. This is especially true when the worker is paid by the job, and not by the hour, commission, or piece rate. Employment is usually of open-ended duration. If the licensed professional performs services on a continuing basis for an indefinite period of time, it would be evidence of employment, especially if the services are a regular part of the principal's business. Contracts entered into by a licensed professional that include a start date and end date would be an indication of independence.
(12) Custom in Industry and Location	The principal treats the professionals licensed by the Bureau of Barbering and Cosmetology as employees.	Professionals licensed by the Bureau of Barbering and Cosmetology typically operate their own separately established business under the establishment licenses of the principals.	This element carries low weight. Each determination must stand on its own facts regarding the principal's right to direct and control the services. Industry custom merely gives an inference or direction to the determination.
(13) Instrumentalities, Tools, and Place of Work	The licensed professional performs his or her services at the principal's place of business. The principal pays all of the expenses of operating and maintaining the shop, owns the equipment, and furnishes the supplies. The principal provides the premises, workstations, chairs, stationary dryers, mirrors, and wash basins. The principal provides the shampoos, conditioners, hair dyes, permanent solutions, rollers, and towels. The principal provides a receptionist without charging the licensed professional. The licensed professional does not pay rent for space, equipment, or supplies provided by the principal.	The licensed professional pays rent to the principal for space and facilities. The licensed professional pays for any service provided by the principal, such as laundry for towels or drapes. The licensed professional is free to use his or her own products and is not required to use the principal's products. If the licensed professional uses any of the principal's products, he or she must pay for those products. The licensed professional provides and maintains his or her own major equipment, such as facial equipment.	This element carries medium to great weight. Its importance will vary depending on the value of the items. Typically in this industry, the major equipment such as chairs, sinks, etc., are part of the shop. Hand tools commonly used by the licensed professional, such as combs, scissors, and clippers do not infer either employment or independence. However, larger more expensive equipment such as facial machines would suggest a major investment by the licensed professional, which would be an indication of an independent contractor relationship. The fact that the principal rents space and equipment to the licensed professional is, by itself, an indication of independence. However, it must be examined in connection with other ELEMENTS such as, supervision on the job, training, work schedules and engagement in a distinct business in order to establish the true nature of the relationship.

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(14) Method of Payment	The principal, without negotiation, sets the amount of compensation to be paid to the licensed professional. The licensed professional is paid regular amounts at regular intervals. The licensed professional is paid by time (the hour, week, month, etc.), or by commissions. The principal reimburses expenses or furnishes benefits, or both, to the licensed professional. The principal collects all monies, tallies the proceeds, and pays the licensed professional.	Rental payments and payments for laundry, etc., are negotiated. The licensed professional issues a Form 1099 to the principal to reflect all rent payments of \$600 or more paid during the calendar year. There are no payments from the principal to the licensed professional, since the professional licensed by the Bureau of Barbering and Cosmetology is paid directly from his or her own clientele. However, the principal can pay a commission for the sale of his or her products to any licensed professional who chooses to make a sale.	This element carries a low weight. The method of payment is only an indication of the type of relationship. It must be examined in connection with other elements, such as, supervision, work schedule, and the engagement in a distinct business. Taken by itself, the method of payment does not strongly weigh in favor of employment or independence.
(15) Belief of Parties	All parties believe the relationship is one of employment.	All parties agree that the relationship is one of independence.	This element is given low weight. The belief of the parties is indicative of the relationship intended, but it is not controlling.
(16) Part of Regular Business of Principal	The services of the licensed professional are an essential part of the principal's business activities, which is the providing of barbering and cosmetology services.	The services of the licensed professional are incidental to and are not an essential part of the principal's business activities. The principal is an investor in an establishment and only provides financial backing for licensed professionals. The principal does not perform any services for the salon business.	This element is given medium weight. If the services of the licensed professional are an integral (regular, normal, central) part of the principal's business, then the principal, by business necessity, needs to maintain control over the services of the licensed professional. If the principal has professionals licensed by the Bureau of Barbering and Cosmetology performing services in his or her salon as employees as well as alleged independent contractors, the services of the alleged independent contractors must be clearly distinguished from the services of the employees using the other elements listed above.